

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 533

Citations Affected: IC 13-11-2-38.3; IC 13-11-2-164; IC 13-18-20-12; IC 13-30-4-1.

Synopsis: Confined animal feeding operations. Conference committee report for ESB 533. Establishes National Pollutant Discharge Elimination System permit procedures for concentrated animal feeding operations (CAFOs). Establishes civil penalties for CAFOs that commit multiple violations of water pollution control laws or rules or standards adopted by the water pollution control board relating to water pollution control laws. **(This conference committee report: (1) requires a person that files a notice of intent to obtain a general CAFO NPDES permit to include a copy of plans and specifications for the design and operation of manure treatment and control facilities; (2) changes the amounts that must be remitted to the department of environmental management to obtain an initial CAFO NPDES permit or renew a CAFO NPDES permit to \$150 for a general permit and \$300 for an individual permit; (3) provides that the civil penalties established in the bill apply specifically to CAFOs instead of confined feeding operations in general; (4) changes the amounts of the civil penalties from \$50,000 to \$5,000 and from \$100,000 to \$10,000; and (5) provides that all of the civil penalties are distributed to the clean water Indiana fund, the soil and water conservation districts in which confined feeding operations are located, and the political subdivisions in which confined feeding operations are located.)**

Effective: Upon passage.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 533 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 13-11-2-38.3 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: **Sec. 38.3. "Concentrated animal feeding**
- 5 **operation" or "CAFO", for purposes of IC 13-18-19, IC 13-18-20,**
- 6 **and IC 13-30, has the meaning set forth in 40 CFR 122.23.**
- 7 SECTION 2. IC 13-11-2-164 IS AMENDED TO READ AS
- 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 164. (a) "Political
- 9 subdivision", for purposes of IC 13-18-13, means:
- 10 (1) a political subdivision (as defined in IC 36-1-2);
- 11 (2) a regional water, sewage, or solid waste district organized
- 12 under:
- 13 (A) IC 13-26; or
- 14 (B) IC 13-3-2 (before its repeal July 1, 1996); or
- 15 (3) a local public improvement bond bank organized under
- 16 IC 5-1.4.
- 17 (b) "Political subdivision", for purposes of IC 13-18-21, means:
- 18 (1) a political subdivision (as defined in IC 36-1-2);
- 19 (2) a regional water, sewage, or solid waste district organized
- 20 under:
- 21 (A) IC 13-26; or

(B) IC 13-3-2 (before its repeal July 1, 1996);

(3) a local public improvement bond bank organized under IC 5-1.4;

(4) a qualified entity described in IC 5-1.5-1-8(4) that is a public water utility described in IC 8-1-2-125; or

(5) a conservancy district established for the purpose set forth in IC 14-33-1-1(a)(4).

(c) "Political subdivision", for purposes of IC 13-19-5 **and IC 13-30**, has the meaning set forth in IC 36-1-2-13 and includes a redevelopment district under IC 36-7-14 or IC 36-7-15.1.

SECTION 3. IC 13-18-19-3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) A person that proposes to:**

(1) construct a concentrated animal feeding operation;

(2) modify an existing confined feeding operation such that it becomes a CAFO; or

(3) modify an existing CAFO;

must construct or modify the operation in accordance with rules for CAFO NPDES permits adopted by the board.

(b) Obtaining an NPDES permit for a CAFO meets the requirements of IC 13-18-10-1 and 327 IAC 16 to obtain an approval.

(c) A person that:

(1) is required; or

(2) chooses;

to obtain an NPDES permit under this section may obtain an NPDES general permit by filing a notice of intent with the department, unless that person is required by the commissioner to obtain an individual NPDES permit. When a person files a notice of intent under this subsection, the commissioner shall publish a notice requesting comments concerning the notice of intent. A comment period of at least thirty (30) days must follow publication of a notice under this subsection. During the comment period, interested persons may submit written comments to the commissioner concerning the notice of intent.

(d) A notice of intent filed under subsection (c) must:

(1) certify that the CAFO follows or will follow rules for CAFO NPDES permits adopted by the board;

(2) include a copy of the site plan for the CAFO; and

(3) include a copy of plans and specifications for the design and operation of manure treatment and control facilities.

(e) Subject to subsection (f), a person remains subject to an NPDES general permit for a CAFO until the earlier of:

(1) the date on which the person discontinues and closes the operation in accordance with 327 IAC 16-12; or

(2) the date five (5) years after the date on which the notice of intent was filed under subsection (c).

(f) A person remains subject to an NPDES general permit for a CAFO after the date indicated in subsection (e) if, before that date, the person files another notice of intent with the department under rules adopted by the board for CAFO NPDES general permits. A

notice of intent filed under this subsection must comply with subsection (d).

(g) If a discharge from a CAFO to waters occurs during the five (5) years that immediately precede the date of filing of the notice of intent under subsection (c) or (f), the department may determine that the person that files the notice of intent must apply for an individual NPDES permit for the operation.

(h) If a person applies for and receives an individual NPDES permit under this section and:

(1) no discharge to waters from the CAFO occurs; or

(2) no enforcement action is taken based on:

(A) a violation that represents; or

(B) a series of violations that represent;

a threat to the environment;

during the five (5) years immediately following the issuance of the individual NPDES permit, the person may become subject to an NPDES general permit for the operation by filing a notice of intent under subsection (c).

(i) A determination by the commissioner that an individual NPDES permit is required is appealable under IC 4-21.5.

SECTION 4. IC 13-18-20-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) **Except as provided in subsections (c) and (d)**, when a person files an application with the department concerning a NPDES permit, including:

(1) an application for an initial permit;

(2) the renewal of a permit;

(3) the modification of a permit; or

(4) a variance from a permit;

the person must remit an application fee of fifty dollars (\$50) to the department.

(b) If a person does not remit an application fee to the department, the department shall deny the person's application.

(c) **When a person files an application with the department concerning:**

(1) an initial; or

(2) the renewal of a;

general NPDES permit under IC 13-18-19-3, the person must remit an application fee of one hundred fifty dollars (\$150) to the department.

(d) **When a person files an application with the department concerning:**

(1) an initial; or

(2) the renewal of an;

individual NPDES permit under IC 13-18-19-3, the person must remit an application fee of three hundred dollars (\$300) to the department.

SECTION 5. IC 13-30-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who violates:

(1) any provision of:

(A) environmental management laws;

(B) air pollution control laws;

(C) water pollution control laws;

(D) IC 13-18-14-1; or

(E) a rule or standard adopted by one (1) of the boards; or

(2) any determination, permit, or order made or issued by the commissioner under:

(A) environmental management laws or IC 13-7 (before its repeal);

(B) air pollution control laws or IC 13-1-1 (before its repeal); or

(C) water pollution control laws or IC 13-1-3 (before its repeal);

is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of any violation.

(b) The department may:

(1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and

(2) request in the action that the person be enjoined from continuing the violation.

(c) With respect to a violation under subsection (a) by a CAFO of water pollution control laws or a rule or standard adopted by the water pollution control board relating to water pollution control laws, the department may impose:

(1) a civil penalty in addition to the civil penalty imposed under subsection (a) not to exceed five thousand dollars (\$5,000) per day for a violation that represents three (3) or more separate discharges to waters of the state during the period that ends five (5) years after the first discharge occurs; and

(2) a civil penalty in addition to the civil penalty imposed under subsection (a) not to exceed ten thousand dollars (\$10,000) per day for a violation that represents five (5) or more separate discharges to waters of the state during the period that ends ten (10) years after the date the first discharge occurs.

If the department imposes an additional penalty under this subsection, the person that commits the violation is liable for the additional penalty.

(d) The department shall distribute revenue that results from the penalties imposed under subsection (c) as follows:

(1) Seventy-five percent (75%) to the clean water Indiana fund established under IC 14-32-8.

(2) Fifteen percent (15%) to the soil and water conservation district in which the confined feeding operation is located.

(3) Ten percent (10%) to the political subdivisions in which the confined feeding operation is located (other than the district referred to in subdivision (2)), in proportion to the most recently collected property tax levies of those political subdivisions.

SECTION 6. An emergency is declared for this act.

(Reference is to ESB 533 as reprinted April 9, 2003.)

Conference Committee Report
on
Engrossed Senate Bill 533

Signed by:

Senator Jackman
Chairperson

Representative Bottorff

Senator Lewis

Representative Friend

Senate Conferees

House Conferees